IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8102 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RADHABEN W/O PANAMBHAI MADHABHAI PARMAR - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR PS CHAMPANERI for Petitioner(s) : 1,
MR SIRAJ GORI AGP for Respondent(s) : 1,2,4.
MR HS MUNSHAW for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/11/2005

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged an order dated 10th March, 2005, passed by the

District Development Officer as confirmed by an order dated 16/4/2005 passed by the Additional Development Commissioner.

2. The petitioner is an elected Up-Sarpanch of Tarapur Gram Panchayat. A case was registered against the petitioner on 9th February, 2005 for allegations of having committed offences under Sections 419, 465, 466, 468, 471, 182, 177, 198, 199, 200, 203 and 114 of the Indian Penal Code as well as Section 12 of the Indian Passport Act and her husband who was also the Sarpanch of the same Gram Panchayat. It was alleged that they are involved in the activities of preparation of bogus passports and obtaining visa thereon for sending passengers to America, London etc. by charging huge amounts.

3. On account of the involvement of the petitioner in the above mentioned criminal case being Crime Register Case No. 12/2005 before Tarapur Police Station, the District Development Officer passed an order suspending the petitioner from her position as a Dy. Sarpanch in exercise of power u/s 59(1) of the Gujarat Panchayat Act, 1993. The petitioner appealed unsuccessfully against the

order of the District Development Officer and her appeal came to be rejected by the Additional Development Commissioner by his order dated 16/4/2005. The petitioner has, therefore, challenged both these orders in the present petition.

4. From the order passed by the District Development Officer, it can be seen that pursuant to the said criminal case filed against the petitioner, the petitioner was detained in police custody from 10/2/2005 till she was bailed out on 17/2/2005. District Development Officer, therefore, found that the petitioner cannot be allowed to discharge her duties as Dy. Sarpanch since she is involved in cases of having fabricated documents and false affidavits. She was also detained in police custody. She is thus alleged to have committed offence of moral turpitude. Additional Development Commissioner approved the view of the District Development Officer.

5. From the perusal of the allegations made against the petitioner in the said criminal case it can be seen that the charges against the petitioner are of serious nature. Allegations of having fabricated documents such as

passports and having admitted to send citizens out of countries by such fabricated passport is indeed a serious allegation and would have an element of moral turpitude. Additionally the petitioner was detained in police custody for almost seven days. Section 59 of Panchayat Act reads as follows:

> 59.(1) The District Development Officer may sspend from office the Sarpanch or the Upa-Sarpanch of a village panchayat against whom any criminal proceedings in respect of an offence involving moral turpitude have been instituted or who has been detained in a prison during trial for any offence or who is undergoing such sentence of imprisonment as would not disqualify him from continuing as a member of the panchayat under section 30 or who has been detained under any law relating to preventive detention for the time being in force.
> (2) Where any Sarpanch or Upa-Sarpanch, has been suspended under sub-section (1) another member of the village panchayat shall, subject to the conditions to which the election of the Sarpanch or Upa-Sarpanch, so suspended was subject, be elected to perform all the duties and exercise all the powers of a Sarpanch or Upa-Sarpanch, during the period for which such suspension continues.
> (3) An appeal shall lie against an order passed under sub-Section (1) to the State Government. Such appeal shall be made within a period of thirty days from the date of the order.

6. From the perusal of Section 59 of Gujarat Panchayats Act it can be seen that District Development Officer has power to suspend a Sarpanch or Upa-Sarpanch of the

village panchayat against whom criminal proceedings in respect of offence involving moral turpitude have been instituted or who has been detained in a prison during trial for any offence or who is undergoing such sentence of imprisonment as would not disqualify him from continuing as member in panchayat u/s 30 or one who has been detained under any law under preventive detention.

7. In the present case, the petitioner who was the Dy. Sarpanch criminal proceedings of offence involving moral turpitude has been instituted. She has also been detained in police custody.

8. Learned AGP Shri Gori appearing for the respondents rightly pointed out the decision of learned Single Judge reported in **1992 (2) GLR page 1204,** in which the learned Judge was pleased to come to the following conclusion:-

> 15.”In my opinion, the aforesaid four decisions cannot be projected in the process of interpretation of a provision in s statute dealing with local self-Govt. Bodies, more so, when the provision is made to empower the authority to take action of suspending the person against whom criminal proceeding is instituted. The use of phrase 'against who criminal proceedings have been instituted' is a apposite and purposive. The Legislature has not advisedly circumscribed or restricted the clause 'against whom criminal proceedings have been instituted' by further words 'in a Court of law'. This omission is

> deliberate and purposive. It is not the function of this Court to re-write the provision or to read something more in a provision which is not there. Such an exercise would denude the provision of its salutory object of achieving suspension of a Sarpanch or Upa-Sarpanch of Panchayat against whom criminal proceeding is instituted. It is true that in all cases of setting in motion of criminal law by F.I.R. By a complainant or informant without anything more may not justify the authority to take drastic step of suspension. However, when coupled with the F.I.R. There is report of Police informing the authority about the involvement of person concerned in the offence it will be open to the authority to satisfy itself independently as to whether it should take action against the person concerned. No hard and fast rule can be laid down for the exercise of power u/s 51(1) of the said Act. In my opinion, it is for the competent authority to decide on the facts and circumstances of the case before it as to whether criminal proceedings can be said to have been initiated against the person concerned."

9. Learned AGP also relied on the decision of Division Bench in the case of **Abhuji Karshaji Thakore v. Thakore Jitaben Manchaji & Ors. reported in 2003 (2) GLR page 1541**, in which the Division Bench came to the conclusion that powers u/s 59(1) of the Gujarat Panchayats Act can be exercised even if offence alleged to have been committed by the Sarpanch have no reference to his duties as a Sarpanch.

9.1 For the same purpose reliance was placed on the decision of Hon'ble Supreme Court in the case of **Mushtaq**

Ahmed Hasanbhai Mansuri vs. V.C. Trivedi reported in 2003 (1) GLH 572, wherein also with reference to the provisions of Gujarat Municipalities Act empowering the authorities to remove a member of the Municipal Council for any act of disgraceful conduct, the Hon'ble Supreme Court held that there is no requirement that such disgraceful conduct should be in discharge of his duties and even if the conduct is disgraceful which bring shame or dishonour or ignominy to himself or the institution, the person holding office in the Municipal Council can be removed u/s 37 of the Gujarat Municipalities Act.

10. Learned AGP also rightly relied on the decision of Hon'ble Supreme Court in the case of **Bipinchandra Parshottamdas Patel (Vakil) v. State of Gujarat & Ors.,reported in 2003 (2) GLH 194** wherein interpreting the provisions of Gujarat Municipalities Act, 1963 and in particular section 40 thereof which empowers the State Government or the authorised officer to suspend a president or vice president of the Municipalities against whom any criminal proceedings in respect of any offence under Prevention of Corruption Act has been instituted or who has been detained in a prison under trial under the provisions of law for the time being in force, the

Hon'ble Supreme Court held that interpretation of the words during trial will have to promote the purpose of Section 40 and the word trial should not be given a restricted meaning so as to include only proceedings after the accused is actually arraigned before the Competent Court for framing and facing the charges. It was held that the detention served as a step in aid for trial.

11. Learned AGP further pointed out that in the above mentioned decision in the case of Bipinchandra Parshottamdas Patel (Vakil) (supra), the Hon'ble Supreme Court held the view of the Division Bench of this Court in the case of **Bipinchandra Parshottamdas Patel (Vakil) v. State of Gujarat & Ors. reported in 2002(1) GLR** page 319, wherein also a similar view was taken and it was held that provisions of Sectin 40 of the Gujarat Municipalities Act can be resorted to even when a person is in judicial custody before the committal of case or actual commencement of trial.

12. In view of the fact that the petitioner is facing serious charges for which she was also detained in police custody for nearly seven days and in view of the fact

that the District Development Officer as well as the Additional Development Commissioner after applying their mind to the facts on hand came to the conclusion that the petitioner cannot be permitted to continue to discharge the duties as a Dy. Sarpanch till she is cleared of such charges; I find no illegality having been committed by the authorities while passing such orders. The petition is required to be and hereby rejected. Rule is discharged. No order as to costs.

(Akil Kureshi, J.)

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